4 & 36 **S.B. CIVIL MISC. APPEAL NO.239/2007.**
(Hari Das & Ors. Vs. Mahesh Sunder & Ors.)

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S.B. CIVIL MISC. APPEAL NO.214/2007.
(Hari Das & Ors. Vs. Mahesh Sunder & Ors.)

Date of Order :: 18th January 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Manoj Rathore, for the appellants.

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BY THE COURT:

Having heard learned counsel for the appellants in these two appeals preferred by the same claimants against the common award dated 18.09.2006 made by the Motor Accidents Claims Tribunal, Sojat in Claim Cases Nos. 57/2003 and 58/2003 respectively, this court is satisfied that the award in question rules out any scope for enhancement; and for the appeals involving common facts and similar questions, are taken up for disposal by this common order.

In a vehicular accident that occurred on 06.03.2003 on Sojat City to Bagdi road near Siyat Girls School, two brothers, Sunil (about 20-21 years) and Kapil (about 24-25 years), sons of the claimants Nos. 1 and 2 and brothers of claimant No.3, perished on receiving fatal injuries when the motorcycle they were riding with the injuried Vinod Kumar was hit by an on-coming jeep bearing registration No. RJ 14 6C 0646. Alleging the accident to have occurred for the

negligence on the part of the driver of the jeep, the claimants sought compensation in relation to the victim Sunil (Claim Case No.57/2003) with the submissions that the deceased was about 20 years in age, had just appeared in senior secondary examination, and was earning Rs.3,000/- per month while working as a teacher in Chandra Raj Public School, Sojat Road and by way of tuitions. In relation to the deceased Kapil (Claim Case No.58/2003), it was submitted that he was about 24 years in age, had completed his graduation from Jainarayan Vyas University, and was earning Rs.5,000/- per month while being engaged as a teacher in the aforesaid school and by way of tuitions. The claimants also pointed out serious set back and grave agony suffered by them for demise of their two young but grown-up sons destroying all their hopes and wrecking their entire life.

After framing necessary issues upon reply of the non-applicant insurer, and taking the evidence led by the parties, the Tribunal has found the accident to have occurred for rash and negligent driving of the jeep and has held the non-applicants, driver, owner and insurer of the offending jeep, liable for compensation.

Taking up quantification of compensation in Claim Case No.57/2003, the Tribunal has noticed that the deceased Sunil was about 20 years and 5 months in age; he had

completed his secondary school and on the date of accident had appeared in his senior secondary examination. The Tribunal has also referred to the evidence produced on record showing the deceased being engaged as teacher with Chandra Raj Public School, Sojat Road since 22.07.2002 earning Rs. 900/- per month. Having regard to the facts and circumstances of the case, observing that though the deceased was still undergoing his studies but had already started earning and was contributing to the family, and looking to the future certainties and uncertainties, the Tribunal has put an estimate on the average income of the deceased at Rs.2,700/- per month and after deducting one-third wherefrom has taken an amount of Rs.1,800/- per month towards loss of contribution and after noticing the age of the father of the deceased at 51 years, that of his mother at 49 years and that of his sister at about 22 years, the Tribunal has considered it appropriate to apply a multiplier of 15 to assess pecuniary loss at Rs.3,24,000/-. The Tribunal has further allowed Rs.20,000/- towards non-pecuniary loss and Rs.2,000/- towards funeral expenses; and has made award of compensation in the sum of Rs.3,46,000/- in favour of the claimants-appellants.

In Claim Case No.58/2003 relating to demise of Kapil, about 25 years in age, the Tribunal has referred to the evidence produced on record showing the deceased being

engaged with the said Chandra Raj Public School, Sojat Road school since 14.01.2003 earning Rs. 900/- per month and again on the same considerations as adopted in the Case No. 57/2003 has taken average income of the deceased at Rs. 2,700/- per month and loss of contribution at Rs. 1,800/- per month and with application of multiplier of 15 has assessed pecuniary loss at Rs.3,24,000/- and allowing Rs.20,000/- towards non-pecuniary loss and Rs.2,000/- towards funeral expenses, has made award in the sum of Rs.3,46,000/- in favour of the claimants-appellants.

The respective awards have been assailed in these two appeals with the submissions that the claimants have suffered serious set back for loosing their two grown up sons in the same accident and the ultimate amount awarded by the Tribunal remains too low and inadequate in each case. Learned counsel appearing for the claimants-appellants has contended that the Tribunal has erred in adopting the multiplicand on the basis of estimated average income of the deceased at Rs.2700/- per month and after deducting one-third wherefrom, has further erred in taking only Rs.1,800/- towards loss of contribution to the claimants and then applying a lower side multiplier of 15. Learned counsel has referred to a Division Bench decision of this Court in Union of India & Anr. Vs. Sushila Devi & Anr. : 2007 (1) WLC 258 to contend that

for the death of 25 years old son, this Court has allowed application of multiplier of 17 for assessing pecuniary loss and the same multiplier ought to have been applied in the present cases too. Learned counsel further submitted that in view of the serious agony suffered by the claimants, the award on non-pecuniary loss also stands on much lower side.

Though every accident is unfortunate and brings nothing but sorrow; and the woes of the present claimants are manifold for their loosing two sons in the same accident but then, for quantification of compensation to be awarded for vehicular accident, the Tribunal is required to take into consideration various facts and factors and what could be awarded in monetary terms is only the just compensation as would be admissible on the facts and in the circumstances of each case within the parameters defined by the broad principles governing such process of quantification.

Having examined the impugned award with reference to each individual case and in its totality, this Court is satisfied that the Tribunal has taken a compassionate view of the matter and has allowed compensation rather on the higher side; and there is no scope for upward revision of the award amount.

The deceased were respectively about 21 and 25 years in age and were not shown in any settled job or

employment nor were carrying any such technical qualification or expertise for which any income higher than that estimated by the Tribunal at Rs.2,700/- per month could be taken. Then, the Tribunal has proceeded to take rather excessive amount at two-third of the estimated income towards loss of contribution for the claimants. The deceased were unmarried persons and the prospects of their getting married in future and thereby a larger part of their income being diverted to their own families cannot be ignored. Application of multiplier of 15 is also not inadequate and stands rather on the higher side in view of the age of the father and mother of the deceased at 51 and 49 years respectively. Applying the principles enunciated by the Hon'ble Supreme Court in the case of U.P.S.R.T.C & Ors. Vs. Trilok Chandra & Ors.: 2003 ACJ 790, for the purpose of choice of appropriate multiplier, and looking to the age of the parents, rather a multiplier of 13 was required to be applied. In Sushila Devi's case, as cited by the learned counsel for the appellant, the details of fact situation of the said case is not available so as to notice the circumstances for which the Tribunal has made an award with application of multiplier of 17 that was affirmed by the learned Single Judge and then the appeal filed by the non-applicants was dismissed in limine by the Hon'ble Division Bench. In any case, it has not been laid down as a principle of general application that in every case of

death of a young person of 25 years of age, while awarding compensation to the parents, a multiplier of 17 is required to be applied. In such claim cases under Section 166 of the Motor Vehicles Act, choice of multiplier is dependent on a variety of facts and factors; and what is required is that ultimately an amount of just and reasonable compensation ought to be awarded. Then, interference in appeal is made only when the given award could be said to be either highly excessive or grossly insufficient, as the case may be. In the present case, the Tribunal has not only taken higher multiplicand but has applied substantially higher multiplier of 15.

The amount of non-pecuniary loss is of general damages; and that has also been allowed at a reasonable figure of Rs.20,000/- in each case and cannot be said to be inadequate or inappropriate.

The award of compensation as made by the Tribunal in the ultimate analysis cannot be said to be falling short of just compensation admissible in these cases so as to warrant interference in appeal.

The appeals fail and are, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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Date of Order :: 18th January 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Manoj Rathore, for the appellants.

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Appeal is dismissed vide order made in S.B.Civil Misc. Appeal No.239/2007 (Hari Das & others Vs. Mahesh Sunder & others).

B.O.

COURT MASTER